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June 22, 2007

The Honorable Charles Terreni
Chief Clerk of the Commission
Public Service Commission of South Carolina
Post Office Drawer 11649
Columbia, South Carolina 29211

Re: In the Matter of Petition of Sprint Communications Company, L.P., and Sprint Spectrum L.P., d/b/a Sprint PCS for Arbitration of Rates, Terms, and Conditions of Interconnection with BellSouth Telecommunications, Inc. d/b/a AT&T Tennessee, d/b/a AT&T Southeast
Docket No. 2007-215-C

Dear Mr. Terreni:

Enclosed for filing are an original and (1) copy of BellSouth Telecommunications, Inc., d/b/a AT&T South Carolina's Motion to Dismiss and, in the Alternative, Answer in the above-referenced matter.

By copy of this letter and as indicated on the attached Certificate of Service, I am serving all parties of record with an electronic copy of this filing with the attachments, and a paper copy of this filing via U.S. Mail without the attachments. If any party would like a paper copy of the attachments, please let me know.

Sincerely,



Patrick W. Turner

PWT/nml

Enclosure

cc: All Parties of Record

DM #682313

THIS DOCUMENT IS AN EXACT DUPLICATE OF THE E-FILED COPY SUBMITTED TO THE COMMISSION IN ACCORDANCE WITH ITS ELECTRONIC FILING INSTRUCTIONS.

**BEFORE THE
SOUTH CAROLINA PUBLIC SERVICE COMMISSION**

In the Matter of Petition of Sprint)
Communications Company L.P. and Sprint)
Spectrum L.P., d/b/a Sprint PCS for)
Arbitration of Rates, Terms, and Conditions)
of Interconnection with BellSouth)
Telecommunications, Inc., d/b/a/ AT&T)
Tennessee, d/b/a AT&T Southeast)
_____)

Docket No. 2007-215-C

**BELLSOUTH TELECOMMUNICATIONS, INC., d/b/a AT&T SOUTH CAROLINA'S
MOTION TO DISMISS AND, IN THE ALTERNATIVE, ANSWER**

INTRODUCTION

BellSouth Telecommunications, Inc. d/b/a AT&T South Carolina ("AT&T") submits the following Motion to Dismiss and, In the Alternative, Answer to the Petition for Arbitration ("Petition") filed by Sprint Communications Company L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS (collectively referred to as "Sprint"). AT&T requests that the Public Service Commission of South Carolina ("the Commission") dismiss Sprint's arbitration issue because Sprint improperly seeks to arbitrate the interpretation of a merger commitment that is embodied in an Order of the Federal Communications Commission ("FCC") and which lies within the exclusive jurisdiction of the FCC. In answer to the Petition, AT&T requests the Commission approve the attached interconnection agreement, which reflects the results of the parties' negotiations before Sprint refused to follow through with executing a new agreement. AT&T requests the Commission resolve, as the only arbitrable issue, that Attachments 3A and 3B should be included in the new agreement. AT&T explains its position in more detail below.

MOTION TO DISMISS

I. The Issue Sprint Raised Is Not A Section 251 Arbitration Issue

In accordance with the Act, an ILEC can only be required to arbitrate and negotiate issues related to Section 251 of the Act, and the Commission can only arbitrate non-251 issues to the extent they are required for implementation of the interconnection agreement.¹ Importantly, Section 252 makes clear that the Arbitrators' role is to resolve the parties' open issues to "meet the **requirements** of Section 251" 47 U.S.C. § 251(c)(1) (emphasis added). In its Petition, Sprint does not ask the Commission to address any requirement of Section 251.

Instead, Sprint asks the Commission to adopt Sprint's erroneous interpretation of a voluntary commitment (which clearly was not required by Section 251 of the Act) that is embodied in an FCC Order addressing a merger that was not subject to review or approval by this Commission. The sole issue that Sprint raises in this arbitration is clearly not an arbitrable issue pursuant to the Act. Furthermore, the issue that Sprint raises in its Petition was not discussed in the context of the parties' negotiations of a new interconnection agreement. Sprint's issue is as follows:

"ISSUE 1: May AT&T Southeast effectively deny Sprint's request to extend its current Interconnection Agreement for three full years from March 20, 2007 pursuant to Interconnection Merger Commitment No. 4?" Petition, p. 8.

That issue, regarding a merger commitment, is completely outside the scope of a Section 251 arbitration. Furthermore, Commission resolution of this merger commitment issue is not a

¹ *Coserve Limited Liab. Corp. v. Southwestern Bell Tel.*, 350 F.3d 482, 487 (5th Cir. 2003); *MCI Telecom., Corp. v. BellSouth Telecom., Inc.*, 298 F.3d 1269, 1274 (11th Cir. 2002).

requisite for implementation of the interconnection agreement. The merger commitment is not a *requirement* of Section 251. Sprint's attempt to frame the merger commitment as an arbitrable issue is an affront to the plain, clear, and unambiguous language contained in the Act. Given that Sprint's Petition contains solely this one non-arbitrable issue, Sprint's issue should be dismissed.

II. The FCC Has Sole Jurisdiction Over AT&T's Merger Commitments

On March 26, 2007, the FCC released a Memorandum Opinion and Order approving the merger of AT&T and BellSouth ("Merger Order"). The FCC has the sole authority to interpret, clarify, or enforce any issue involving merger conditions set forth in its Merger Order. Furthermore, FCC resolution of all issues relating to merger conditions ensures a uniform regulatory framework and avoids conflicting and diverse interpretations of FCC requirements. Since the FCC has jurisdiction over these issues, ruling on Sprint's proposed issue would require the Commission to speculate as to the FCC's intent in adopting the commitments. Even if raised with the Commission in another context (that is, not in connection with an arbitration under Section 251 of the Act), adjudication of the issue with the Commission raises the potential for conflicting rulings by the FCC and this Commission.

Pursuant to the Federal Communications Act, the FCC is vested with the responsibility for evaluating and approving telecommunications mergers. 47 U.S.C. §§ 214(a), 310(d). The FCC undertakes an intense process whereby it reviews the parties' applications, takes public comment, and investigates whether the proposed transaction complies with federal law and FCC rules and is in the overall public interest. In approving a merger, the FCC "has the authority to impose and enforce narrowly tailored, transaction-specific conditions that ensure that the public interest is served by the transaction Indeed, [its] public interest authority enables [it] to impose and enforce conditions based upon an extensive regulatory and enforcement experience

....” Merger Order, p. 14, ¶ 22; see also 47 U.S.C. § 303(r). Congress has clearly delegated to the FCC the authority to make and enforce regulatory determinations with regard to the telecommunications industry.

Furthermore, the United States Supreme Court has held that the interpretation of an agency order, when issued pursuant to the agency’s established regulatory authority, falls within the agency’s jurisdiction. *Serv. Storage & Transfer Co. v. Virginia*, 359 U.S. 171, 177 (1959). As the author of the Merger Order and the agency charged with protecting the public interest in the telecommunication field, the FCC possesses jurisdiction over the merger commitments.

Moreover, the FCC explicitly reserved jurisdiction over the merger commitments contained in the Merger Order. The FCC specifically provided that “[f]or the avoidance of doubt, unless otherwise expressly stated to the contrary, **all conditions and commitments proposed in this letter are enforceable by the FCC** and would apply in the AT&T/BellSouth in-region territory, as defined herein, for a period of forty-two months from the Merger Closing Date and would automatically sunset thereafter.” Merger Order (Appendix F), p. 147 (attached hereto as “Exhibit A”) (emphasis added). Nowhere in Appendix F does the FCC provide that interpretation of merger commitment No. 4 is to occur outside the FCC. Thus, the FCC clearly intended to retain the authority to enforce and interpret the merger commitments established in the Merger Order.

Jurisdiction to interpret merger commitments rests exclusively with the FCC. The FCC alone is vested with jurisdiction to interpret and make determinations regarding compliance with those commitments. Therefore, because the sole issue raised by Sprint in this arbitration regards a merger commitment, the Commission should dismiss Sprint’s arbitration issue.

WHEREFORE, AT&T respectfully requests that the Commission dismiss Sprint’s issue.

ANSWER

In the alternative, and pursuant to 47 U.S.C. § 252(b)(3), AT&T responds to the Petition for Arbitration (“Petition”) filed by Sprint Communications Company L.P. and Sprint Spectrum L.P., d/b/a Sprint PCS (“Sprint”) and states the following:

1. Sections 251 and 252 of the Telecommunications Act of 1996 (“1996 Act”) encourage negotiations between parties to reach local interconnection agreements. Section 251(c)(1) of the 1996 Act requires incumbent local exchange companies to negotiate the particular terms and conditions of agreements to fulfill the duties described in Sections 251(b) and 251(c)(2)-(6).

2. As part of the negotiation process, the 1996 Act allows a party to petition a state commission for arbitration of unresolved issues.² The petition must identify the issues resulting from the negotiations that are resolved, as well as those that are unresolved.³ The petitioning party must submit along with its petition “all relevant documentation concerning: (i) the unresolved issues; (ii) the position of each of the parties with respect to those issues; and (iii) any other issues discussed and resolved by the parties.”⁴ A non-petitioning party to a negotiation under this section may respond to the other party’s petition and provide such additional information as it wishes within 25 days after a commission receives the petition.⁵ The 1996 Act limits a commission’s consideration of any petition (and any response thereto) to the unresolved issues set forth in the petition and in the response.⁶

² 47 U.S.C. § 252(b)(2).

³ *See generally*, 47 U.S.C. §§ 252 (b)(2)(A) and 252 (b)(4).

⁴ 47 U.S.C. § 252(b)(2).

⁵ 47 U.S.C. § 252(b)(3).

⁶ 47 U.S.C. § 252(b)(4).

3. Through the arbitration process, a commission must resolve the unresolved issues ensuring that the requirements of Sections 251 and 252 of the 1996 Act are met. The obligations contained in those sections of the 1996 Act are the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. Once a commission has provided guidance on the unresolved issues, the parties must incorporate those resolutions into a final agreement to be submitted to a commission for approval.⁷

4. AT&T and Sprint previously entered into an interconnection agreement that has expired. Although AT&T and Sprint negotiated in good faith as to the terms and conditions for a new interconnection agreement, the parties have been unable to reach a final agreement, and subsequently Sprint filed its Petition. AT&T responds below to each of the separately numbered paragraphs of the Petition:

5. The allegations in Paragraph 1 of the Petition require no response from AT&T.

6. The allegations in Paragraph 2 of the Petition require no response from AT&T.

7. In response to Paragraph 3 of the Petition, AT&T admits that it is an incumbent local exchange company that is certificated to provide certain telecommunications services in certain areas in the State of South Carolina. AT&T admits that its principal place of business in South Carolina is at 1600 Williams Street, Columbia, South Carolina, 29201. AT&T denies the remainder of the allegations in Paragraph 3 of the Petition.

8. AT&T admits the allegations in Paragraph 4 of the Petition. AT&T hereby notifies the parties that its legal representatives for the purposes of this proceeding are:

⁷ 47 U.S.C. § 252(a).

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JURISDICTION

9. In response to the allegations of Paragraph 5 of the Petition, AT&T denies that the Commission has jurisdiction over the subject matter of the issue Sprint raised in its Petition. AT&T admits that Section 252(b)(1) of the Act created an arbitration process, and AT&T affirmatively states that the provisions of the Act speak for themselves. AT&T denies that Sprint's Petition is filed in accordance with the Act. AT&T affirmatively asserts that the obligations contained in sections 251 and 252 of the 1996 Act set forth the obligations that form the basis for negotiation, and if negotiations are unsuccessful, then form the basis for arbitration. Issues or topics not specifically related to these areas are outside the scope of an arbitration proceeding. The issue Sprint raised in its Petition is outside the scope of an arbitration proceeding.

10. AT&T admits the allegations in Paragraph 6 of the Petition.

11. AT&T admits the allegations in Paragraph 7 of the Petition.

12. AT&T admits the allegations in Paragraph 8 of the Petition.

13. In response to the allegations of Paragraph 9 of the Petition, AT&T denies that the Agreement has not expired. AT&T affirmatively asserts that the Agreement expired on December 31, 2004. Since expiration of the Agreement, AT&T and Sprint have operated under terms and conditions in the Agreement to avoid interruption of service pending execution of a new agreement.

14. AT&T admits the allegations in Paragraph 10 of the Petition.

15. Appendix F of the FCC Order speaks for itself, and no response to Paragraph 11 of the Petition is required from AT&T.

16. Appendix F of the FCC Order speaks for itself, and no response to Paragraph 12 of the Petition is required from AT&T.

17. AT&T admits the allegations in Paragraph 13 of the Petition.

18. AT&T admits that it received the request set forth in Paragraph 14 of the Petition, but denies that the request was appropriate pursuant to express terms of Interconnection Merger Commitment No. 4.

19. AT&T admits the allegations in Paragraph 15 of the Petition.

20. AT&T admits that Sprint requests that the Commission resolve a single issue in the arbitration as set forth in Paragraph 16 of the Petition. AT&T affirmatively asserts that the issue Sprint seeks to arbitrate is not a proper issue of a Section 252 arbitration.

21. The excerpts from the Merger Order speak for themselves, and the remainder of Paragraph 17 of the petition contains the issue as framed by Sprint and requires no response from AT&T.

22. Paragraph 18 of the petition contains the issue as framed by Sprint and requires no response from AT&T.

23. AT&T admits the allegations in Paragraph 19 of the Petition.

24. Paragraph 20 of the petition contains legal argument of the issue as framed by Sprint and requires no response from AT&T. To the extent the allegations contained in Paragraph 20 require any response from AT&T, or are inconsistent with AT&T's position, such allegations are denied.

25. AT&T admits the allegations in the first sentence in Paragraph 21 of the Petition. Sprint's position as set forth in Paragraph 21 requires no response from AT&T. The FCC order cited in Paragraph 21 of the Petition speaks for itself and requires no response from AT&T. The Interconnection Agreement cited in Paragraph 21 of the Petition speaks for itself and requires no response from AT&T. The remainder of Paragraph 21 of the Petition contains Sprint's legal interpretation and argument and requires no response from AT&T. To the extent a response is required, AT&T denies the manner in which Sprint frames and interprets relevant law.

26. AT&T denies the allegation in Paragraph 22 of the Petition.

27. AT&T denies each and every allegation in the Petition not expressly admitted herein, and demands strict proof thereof. AT&T denies that Sprint is entitled to the relief requested in the Conclusion And Prayer For Relief of the Petition. AT&T affirmatively asserts that the Commission should dismiss the issue Sprint raised in its petition, and should adopt AT&T's position.

AFFIRMATIVE DEFENSES

28. To the extent Sprint seeks to: (i) arbitrate issues not identified in its Petition; and/or (ii) include and/or incorporate decisions rendered in other pending dockets into the interconnection agreement that is being arbitrated in this docket on issues that were not identified in its Petition; Sprint is barred from doing so pursuant to Section 252(b)(4)(A) of the Act and under the doctrine of laches, estoppel, and/or waiver.

AT&T's POSITION ON UNRESOLVED ISSUES

Under Section 252 of the Act, a non-petitioning party to a negotiation may respond to the other party's petition and provide such additional information as it wishes within 25 days after

the Commission receives the petition.⁸ In accordance with Section 252, AT&T provides the Commission with the following response.

The parties had reached consensus on virtually every issue within the Agreement.⁹ However, when the agreement was all but consummated, Sprint filed its Petition setting forth solely a non-arbitrable issue. Therefore, AT&T is unaware of Sprint's position regarding AT&T's issue set forth below; and, thus, AT&T will only set forth AT&T's position.

ISSUE 2 [Attachments 3A and 3B]: Should Attachments 3A and 3B (attached hereto collectively as "Exhibit C") be incorporated into the new interconnection agreement as "Attachment 3"?

Yes. The terms and conditions found within Attachments 3A and 3B should be incorporated into the new interconnection agreement as "Attachment 3." AT&T and Sprint began negotiations for a new agreement in July of 2004. Those negotiations continued over a course of more than two years. Each party agreed to extend the arbitration window on several occasions as each believed the parties would achieve a negotiated agreement. In December of 2006 the parties did reach an agreement in principle and were working on finalizing the language to be placed in the new agreement. Subsequent to the merger of AT&T and BellSouth, Sprint withdrew its acceptance of the agreement and began pursuing an alternate path of extending its current agreement purportedly in accordance with the merger commitments. AT&T requested to continue to complete the negotiations and finalize the agreement to the parties' mutual satisfaction, but Sprint decided to abandon this process entirely and continued its alternate path of extending its current agreement. Regardless of the fact that Sprint has discontinued any

⁸ 47 U.S.C. § 252(b)(3).

⁹ The Interconnection Agreement is attached hereto as "Exhibit B."

discussions in the context of negotiations or finalization of a new agreement, Sprint ultimately filed this Petition.

AT&T, therefore, submits with this Answer what it believes to be the final agreement the parties had reached through negotiations for the General Terms & Conditions (“Negotiated GT&Cs”) and all attachments except Attachment 3 (“Negotiated Attachments”). AT&T contends that when Sprint withdrew from its negotiations with AT&T, the only issues that were still under discussion and that were subject to agreement in principle pending acceptable language proposals were several issues in Attachment 3. AT&T, therefore, submits its generic Attachment 3A, for wireless interconnection services, and 3B for wireline interconnection services, and asks that the Commission adopt these two Attachments collectively as Attachment 3 along with the Negotiated GT&Cs and the Negotiated Attachments in order to finalize a new agreement.

While AT&T recognizes that this is an unorthodox means of placing disputed issues before the Commission, AT&T is forced to take this approach because of Sprint’s filing of the arbitration without finalizing a disputed issues list, especially given that the parties had reached an agreement in principle as to any remaining issues in Attachment 3 prior to Sprint’s abrupt abandonment of discussions.

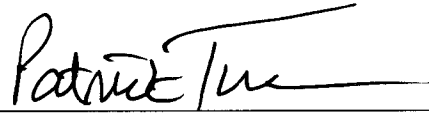
Sprint has filed its arbitration petition within the window described in Section 252(b)(1) of the Act, and has raised no issues other than a single issue that is wholly unrelated to the parties’ negotiation and that is not subject to arbitration under the Act. AT&T, in its sole issue for arbitration, merely asks the Commission to adopt its generic Attachment 3 as proposed by AT&T for inclusion in the negotiated interconnection agreement, and asserts that the attached interconnection agreement reflects the agreement that the parties had reached with respect to the

open negotiation issues for all issues except for matters in Attachment 3 as of December 2006. Accordingly, because of Sprint's refusal to finalize the Attachment 3 matters or to discuss those issues that it deems unresolved in Attachment 3 prior to filing its arbitration petition, this Commission should adopt AT&T's generic Attachment 3 in order for the parties to complete a new agreement.

WHEREFORE, AT&T respectfully requests that the Commission arbitrate this proceeding and grant the relief requested by AT&T.

Respectfully submitted, this 22nd day of June 2007.

BELLSOUTH TELECOMMUNICATIONS, INC.,
d/b/a AT&T SOUTH CAROLINA

A handwritten signature in dark ink, appearing to read "Patrick W. Turner", is written over a horizontal line.

PATRICK W. TURNER
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STATE OF SOUTH CAROLINA)
)
COUNTY OF RICHLAND) CERTIFICATE OF SERVICE

The undersigned, Nyla M. Laney, hereby certifies that she is employed by the Legal Department for AT&T South Carolina (“AT&T”) and that she has caused AT&T South Carolina’s Motion to Dismiss and, in the Alternative, Answer in Docket No. 2007-215-C to be served upon the following on June 22, 2007.

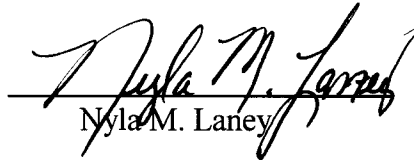
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